Regency Gardens Company *and* Local 32B-32J, Service Employees International Union, AFL-CIO and Amalgamated Union, Local 5, Party to the Contract

Amalgamated Union, Local 5 *and* Local 32B-32J, Service Employees International Union, AFL-CIO and Regency Gardens Company, Party to the Contract. Cases 29-CA-7880 and 29-CB-4123

September 20, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On March 16, 1982, Administrative Law Judge Eleanor MacDonald issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and the Respondent Employer filed a brief in opposition to the General Counsel's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt her recommended Order.

The Administrative Law Judge properly found that on July 24, 1980, Carlos Quiroz, president of Local 5, was told orally by a majority of unit employees at Regency Gardens that they wanted "to be with Local 5" and would sign cards for the Union; that Quiroz informed Leonard Zangas, a principal partner in Regency Gardens, that Local 5 represented a majority of said employees; that Zangas recognized Local 5 as the exclusive bargaining representative, and that Zangas and Quiroz then agreed the parties would be covered by an existing master agreement between Local 5 and Vision Enterprises, a holding company which operates Regency Gardens.

As noted by the Administrative Law Judge, there is no requirement that a union must have, and show to an employer, a majority of signed cards before a union may be lawfully recognized by an employer. Accordingly, as the General Counsel did not prove that the Respondent Union did not represent a majority of the Respondent Employer's unit employees on the date of recognition, we find in agreement with the Administrative Law Judge, and contrary to our dissenting colleague, that Regency Gardens and Local 5 did not violate the Act when the former recognized the latter as the exclusive bargaining representative of the unit employees involved herein.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

MEMBER ZIMMERMAN, dissenting:

The facts in this case, which are not in dispute, show unmistakably that the Respondent Company unlawfully recognized the Respondent Local 5 as the exclusive bargaining representative of its employees at a time when a majority of those employees had not designated that Union as their representative.

According to the uncontroverted testimony of Carlos Quiroz, president of Local 5, he visited the Company's residential apartment complex one day during the third week of January 1980, and spoke with four or five employees, soliciting their membership in the Union. In his own words, these employees, whom he could not otherwise identify, gave him the "impression" that they wanted to be represented by Local 5.[1] Concededly, however, although these employees assured Quiroz that they would sign authorization cards evidencing their intention to designate Local 5 as their collective-bargaining agent, none did so on that occasion.

Thereafter, on January 24, Quiroz telephoned Zangas, a principal partner in both Respondent Regency Gardens and Vision Enterprises. The latter is a holding company which owns and indirectly operates Regency Gardens and other companies engaged in the real estate business and also functions as a multiemployer bargaining association. According to Zangas, who alone testified to the substance of their conversation, Quiroz told him that on his recent visit to Regency Gardens a majority of the employees expressed their wish to be represented by Local 5 and, as their agent, requested that the master agreement previously negotiated

[1] Quiroz testified as follows:

Q. . . . Did these men tell you that they wanted to be represented by your Union at that time?

A. . . . Yes, I got that impression.

* * * * *

Q. At that particular time did they tell you that they wanted your Union to represent them?

A. Yes, that is how I was understanding it.

Q. How did you get that understanding? Did they say that?

A. Yes, they told me they were going to sign the cards and they want to be with Local 5.

by Vision and Local 5, covering other bargaining units, be applied to the Regency Gardens employees.[2] Questioned specifically concerning Quiroz' claim that he represented a majority of the Regency Gardens employees, Zangas testified:

> He told me that he had spoken to them and had gotten their commitment, their interest and that the majority of the people there wanted to participate in the Union.
>
> I told him, Carlos, I said, I have had other dealings with you and I agree to have you represent the men there.
>
> I will enter Regency Gardens under the master contract, but I want you to show me the cards.
>
> He told me that he hadn't gotten the cards signed by them yet and that he was busy and was leaving the cards there to be signed and would later bring them to me.
>
> I said that as soon as I have the cards I will recognize the Union and we will put the contract into effect.
>
> That was the extent of our conversation.

As promised, Zangas, on behalf of Regency Gardens, applied for and received membership status in Vision Enterprises for the purposes of collective bargaining, executing on February 1 a formal document to that effect, entitled "Rider and Agreement." A copy of this document, which among other things purports to bind Regency Gardens to the contract between Vision and Local 5, was mailed to Quiroz on the same date. In a letter dated February 7, Quiroz acknowledged receipt, further stating that the master contract ". . . shall become effective at once and all the [Regency Gardens] employees in your employ shall be covered immediately under the terms and conditions of said labor agreement."

Zangas gives us his account of what transpired next:

> A. After I received that letter I called Mr. Quiroz and I told him, "Mr. Quiroz, this was not our agreement."
>
> The agreement that we are entering into is not effective and will not become effective until I receive the signed cards from the men that you represent at Regency Gardens.
>
> Q. Did he say anything?
>
> A. Yes, he said that he will have them back to me within a short period of time.
>
> Q. And thereafter, did Mr. Quiroz visit you?
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> A. He visited me on or about February 19 or 20.
>
> Q. And what—did he have the cards?
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> A. He produced the cards that had been signed by the employees, which I again say, I verified, and I then told him that I will now implement a contract and I feel we now have a bona fide union contract.

Indeed, the record shows that, on February 19, Quiroz revisited the Regency Gardens apartment complex and obtained signed cards. Quiroz specifically testified to having witnessed the signing of five such cards. By some undisclosed means, he acquired three more and, on February 20, as Zangas had recounted, presented eight authorizations cards in support of his claim to majority status.

Later that month, Zangas, who was apparently unaware of any organizing activity by a rival union, received a letter from Local 32B-32J, dated February 21, in which the latter asserted that it represented a majority of the Regency Gardens employees and requested a meeting for the purposes of collective bargaining.[3] The failure to accede to this request led to the filing of the instant complaint.

Based on the above facts, the Administrative Law Judge concluded, and my colleagues agree, that the General Counsel failed to estabish a *prima facie* case of unlawful conduct. Specifically, they find no evidence that Local 5 lacked majority status when Zangas "recognized" that Union as the collective-bargaining representative of the Regency Gardens employees during his January 24 conversation with Quiroz. The fatal error in this finding lies in focusing on January 24 as the appropriate date on which to determine majority status for recognition cannot, by any stretch of the imagination, be determined to have occurred at that time. It is clear from the uncontradicted and unequivocal testimony of Zangas, himself, that he would not ac-

[2] This agreement, effective from August 1, 1978, through April 30, 1981, and automatically renewable thereafter, contains a provision requiring membership in Local 5 as a condition of employment and further requires employers to deduct from wages due employees, for transmittal to Local 5, union dues and other union obligations.

[3] At the hearing, the parties stipulated into evidence five authorization cards obtained by the rival union immediately preceding its demand for recognition and bargaining. These cards were signed by individuals who had likewise signed cards for Local 5.

The following summary includes the names of the dual card signers and the dates on which cards were signed:

Card Signers	*Local 5*	*Local 32B-32J*
Jose V. Almonacid	2/19/80	2/15/80
Fabio Garcia	(undated)	
Jose Edgar Gonzalez	2/20/80	2/18/80
Jose D. Malave	2/19/80	2/15/80 (date overprinted)
Ernest Quinones	2/19/80	
Jose Rios	2/19/80	
Luis Oscar Rivera	2/19/80	2/19/80
Ramon L. Victoria	2/10/80	2/18/80

quiesce to Quiroz' naked claim that Local 5 represented a majority of the Regency Gardens empoyees,[4] and conditioned both recognition and the application of the extant collective-bargaining agreement between Vision and Local 5 to the Regency Gardens employees upon the *production* of the authorization cards demonstrating majority status. *Only* upon the fulfillment of that precondition was Zangas willing to recognize Local 5 and apply the master agreement to the emlpoyees in question. Without doubt, in a demonstration of good will toward an individual with whom he has had prior and apparently satisfactory dealings, and to avoid administrative delays, Zangas agreed to and did initiate the paperwork required to "enter Regency Gardens under the master contract." However, the precondition was at no time removed. Indeed, when Quiroz attempted to circumvent this precondition in his February 7 letter, Zangas in no uncertain terms reminded him that "this was not our agreement." Thereafter, on February 20, Quiroz faced up to the requirement of supporting his claim to majority status by submitting the promised cards and, upon doing so, Regency Gardens recognized Local 5 as the bargaining representative of its employees and Zangas informed Quiroz he would "now implement a contract and I feel we now have a bonafide union contract." In sum, it is clear that recognition occurred on February 20 and, accordingly, that such recognition was unlawful if, by that date, a majority of the employees involved had not designated Local 5 as their representative for the purposes of collective bargaining.

I find that the General Counsel has met his *prima facie* burden of showing that the Union did not, in fact, have the requisite majority. As previously noted Quiroz submitted eight cards in support of his claim to majority status. While there is no specific evidence as to the composition or size of the unit here involved, it is clear that *no* question was raised by the parties with respect to the inclusion of the eight employees who signed the cards deemed relevant to a majority showing. It is therefore beyond speculation that this unit was comprised of *at least* the eight employees. As further noted, five of those eight employees also signed cards designating the rival Local 32B-32J as their bargaining agent within the same relatively short period of time.[5] Absent other evidence of a sufficiently reliable and probative force, the Board has held that dual cards cannot be regarded as a valid designation that may be counted toward majority as they do not reliably reflect employees' choice of a bargaining agent.[6] It is therefore evident that the cards of no more than three employees (Garcia, Quinones, and Rios), in a unit of no fewer than eight employees, may be used to support Local 5's claim to majority status as of February 20 and, accordingly, that Regency Gardens extended recognition to that Union at a time when the latter did not command a majority. The granting of recognition under such circumstances constitutes unlawful assistance and is a violation of Section 8(a)(1) and (2) of the Act, notwithstanding an employer's honest belief that the union in question had a valid majority at the time recognition was granted.[7] Neither does it avail Regency Gardens in this case that Zangas was unaware of any organizing activity by a rival union when he extended recognition to Local 5. As stated by Administrative Law Judge Arthur Leff in *Crest Containers, supra*:

> . . . in a situation where it has been established . . . that the union granted recognition was a minority union, nothing further must be shown to support a finding of a statutory violation. For majority designation is a *sine qua non* to lawful recognition of an exclusive bargaining agent under the statute.[8]

A fortiori, I find that Regency Gardens and Local 5 violated, respectively, Section 8(a)(1), (2), and (3) and Section 8(b)(1)(A) and (2) by entering into, and maintaining, an agreement which contains both union-security and checkoff provisions.[9]

[4] Cf. *American Beef Packers, Inc.*, 187 NLRB 996 (1971), where the parties entered into negotiations on the assumption that the union had the requisite number of cards to demonstrate majority status and the employer subsequently *acquiesced* in the union's claim to such status.

[5] See fn. 3, *supra*.

[6] See *Crest Containers Corporation*, 223 NLRB 739 (1976), and the cases cited therein.

[7] *International Ladies' Garment Workers' Union, AFL-CIO [Bernhard Altmann Texas Corp.]* v. *N.L.R.B.*, 366 U.S. 731 (1961).

[8] *Supra* at 742.

[9] Fn. 2, *supra*.

DECISION

STATEMENT OF THE CASE

ELEANOR MACDONALD, Administrative Law Judge: This case was heard in Brooklyn and New York, New York, on February 23 and April 24, 1981. The complaint dated May 30, 1980, alleges that:

(1) The Respondent Employer violated Section 8(a)(1), (2), and (3) of the Act by recognizing Local 5 on February 1, 1980; executing a contract on February 1 and 7, 1980; and maintaining and enforcing the contract since that date, including the union-security and dues-deduction provisions of the contract, when Local 5 did not represent a majority of employees and Local 32B-32J was attempting to organize the employees.

(2) Amalgamated Union, Local 5, violated Section 8(b)(1)(A) and by seeking recognition and signing and enforcing the contract.

Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by all the parties, I make the following:

FINDINGS OF FACT

I. JURISDICTION

The Respondent Employer, a copartnership of Leonard Zangas and Peter Mesologites, copartners, doing business under the trade name Regency Gardens Company, has its principal office in Long Island City, New York, and is engaged in the ownership, management, and operation of a residential apartment complex. The Respondent Employer annually derives revenues from rents in excess of $500,000 and purchases goods and supplies valued in excess of $50,000 from enterprises located in the State of New York, which enterprises receive the goods and supplies directly from States outside the State of New York. The Respondent Employer admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Local 32B-32J and Amalgamated Union, Local 5, are each labor organizations within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

The General Counsel called two witnesses in this proceeding. Carlos Quiroz, president of Local 5, testified that he visited Regency Gardens in the third week of January 1980. He spoke two or three employees whom he met in the yard in front of the nine-building complex. He and the employees went into a shop area where Quiroz saw two more employees and where he talked to all of them and explained the benefits provided by Local 5 and his interest in organizing the workers. The employees asked questions about medical benefits, and Quiroz gave them some union literature and explained the master contract of his Union as it relates to wages. The employees assured Quiroz that they were interested in the Union, that they were going to sign authorization cards for the Union, and that "they want to be with Local 5." Quiroz left some blank authorization cards with the men. Quiroz did not ask the names of any of those employees.

On February 19, 1980, Quiroz testified, he returned to Regency Gardens and again spoke to the workers. At this time, he saw the same employees he had spoken to in January and he observed five employees sign and fill out authorization cards for Local 5.

Leonard Zangas, a principal partner in Regency Gardens, testified that Regency Gardens is operated by Vision Enterprises, a holding company that also functions as a multiemployer bargaining association for companies in the real estate business. Vision is a party to a master contract with Local 5 covering a number of housing complexes. Zangas is a principal partner in Vision Enterprises. On January 24, 1980, Zangas testified that he received a phone call from Quiroz who told him that he had seen the employees at Regency Gardens and had "received an agreement" to represent a majority of the employees there. Quiroz said a majority of the employees wanted to participate in the Union. Quiroz asked that the employees be covered under the master contract between Local 5 and Vision Enterprises. Zangas testified that he told Quiroz that since the two had had prior dealings he agreed "to have you represent the men there." Zangas told Quiroz he would enter Regency Gardens under the master contract but that he wanted to see the authorization cards first. As Zangas recalled it, he said, "I recognized Local 5 as the bargaining agent but there was only one stipulation . . . I would forward the documentations to you because I know you Carlos, and we have had dealings before, but you must show me the cards." Quiroz replied that he was busy and had not gotten the cards but that he had left them with the employees for completion and signature. Quiroz promised to bring the cards to Zangas later, and Zangas said that when he saw the cards he would put the contract into effect.

After this, Zangas sent Quiroz a letter dated February 1, 1980, stating that:

> Pursuant to the terms of our Master Agreement between Vision Enterprises and Amalgamated Union Local 5, we are sending you the Rider and Agreement for the property called Regency Gardens Company, 141-41A Union Turnpike, Flushing, NY. This Property is to be covered under our Collective Bargaining Agreement.

The Rider and Agreement, signed by Regency Gardens as the "applicant," provided:

> The Undersigned, being an Employer, engaged in the ownership, operation, maintenance, or management of real estate, and an employer of building services employees, a majority of whom have chosen to be represented by AMALGAMATED UNION LOCAL 5 for the purpose of collective bargaining, hereby applies for membership in VISION ENTERPRISES CO., an unincorporated association which, among other things, functions as a multi-employer bargaining association on behalf of its members.
>
> The Undersigned agrees to abide by all of the By-Laws, rules and regulations of Vision Enterprises Co. now in effect or which hereafter may be in effect.
>
> The undersigned expressly authorized Vision Enterprises Co. to collectively bargain on its behalf, to enter into collective bargaining agreements on its behalf, and agrees to be bound by an [sic] collective bargaining agreements presently or hereafter in effect between Vision Enterprises Co. and Amalgamated Union Local 5.

This application for membership in Vision Enterprises was approved by Vision.[1]

[1] The master agreement had a term from August 1, 1978, to April 30, 1981.

Sometime after this, Zangas testified, he received a letter dated February 7, 1980, from Quiroz on behalf of Local 5 acknowledging receipt of Regency Gardens' approved application for membership in Vision Enterprises. The letter stated:

> The agreement in effect signed by this Union and Vision Enterprises shall become effective at once and all the employees in your employ shall be covered immediately under the terms and conditions of said labor agreement.

Upon receipt of this letter, Zangas testified that he telephoned Quiroz and told him that the contract was not effective and "will not become effective until I receive the signed cards from the men that you represent at Regency Gardens." Quiroz then agreed to bring the cards to Zangas.

On February 20, 1980, Zangas testified, Quiroz came to his office and brought in eight signed cards authorizing Local 5 to represent the employees in collective bargaining and authorizing dues deductions by the Respondent Employer, Regency Gardens. Zangas checked the signatures against his records and then gave the cards to his office manager in order to start implementing the contract "as far as the welfare, the dues, etc."[2]

In late February 1980, Zangas received a letter dated February 21, 1980, from Local 32B-32J stating that that Union represented the building service employees of Regency Gardens and requesting negotiations.[3] There is no evidence in the record that Zangas was aware of any organizing activity by Local 32B-32J before he received the letter referred to above.

Positions of the Parties

The General Counsel argues that Quiroz' testimony is implausible in that he did not ask the employees' names when he attempted to organize them in late January 1980. The General Counsel asserts that Quiroz did not testify that any employee authorized Local 5 to represent him for purposes of collective bargaining on that day. Pointing out that Regency Gardens recognized Local 5 on January 24, 1980, the General Counsel urges that the recognition took place at a time when Local 5 did not represent a majority of employees and that Regency had no proof that Local 5 represented the employees. Finally, the General Counsel argues that, because the authorization cards were secured by Local 5 after the recognition took place, both the recognition and the execution of the contract were unlawful.

The brief filed by Local 32B-32J generally supports the position taken by the General Counsel, and argues further that the purported conditional signing of the master contract is of no legal consequence.

The briefs of Regency Gardens and Local 5 both point out that the testimony of Zangas and Quiroz stands uncontradicted and that there is no proof that Local 5 did not represent a majority of the employees on January 24 or on February 1, 1980.

Discussion

The evidence in the instant case raises almost as many questions as it answers. The General Counsel did not present any testimony tending to establish the size of the bargaining unit at Regency Gardens.[4] Furthermore, although the General Counsel called Quiroz, he was not asked to explain how he was able to give Zangas eight signed cards although he testified that he observed five employees fill out and sign the authorization cards for Local 5 which he later submitted to Zangas. Moreover, no witness testified to any facts concerning Local 32B-32J's organizing campaign although the existence of such a campaign is alleged in the complaint.

Since I must decide this case on the record before me, I am constrained to find that the General Counsel has not presented a *prima facie* case that any violation of the Act occurred.

The uncontradicted record testimony, which I can find no basis for discrediting, is that on January 24, 1980, Quiroz was told orally by a majority of the unit employees at Regency Gardens that they wanted "to be with Local 5" and would sign cards for the Union; that Quiroz informed Zangas that he represented a majority of employees; that Zangas thereupon recognized Local 5 as the exclusive collective-bargaining representative, and that Zangas and Quiroz then agreed that Regency Gardens would become part of Vision Enterprises, a multiemployer bargaining association, and would be covered by the master agreement between Vision Enterprises and Local 5.

There is no requirement that before a union may be lawfully recognized by an employer it must have a majority of signed authorization cards and display them to the employer.[5] The General Counsel did not call any witness whose testimony would establish that Local 5 did not represent a majority of employees in the unit nor that there was any organizing campaign by Local 32B-32J when recognition was extended to Local 5. As has been pointed out in a similar case, inference is no substitute for actual proof, which is the burden of the General Counsel, that the Union did not in fact represent a majority of the Regency Garden employees on the date of recognition. *Progressive Construction Corp.*, 218 NLRB 1368 (1975).

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[2] The cards bore dates ranging from February 10 to 20, 1980.

[3] At the hearing, the parties stipulated the receipt into evidence of five Local 32B-32J authorization cards signed by employees of Regency Gardens. These cards bear dates ranging from February 15 to 19, 1980.

[4] The charges filed by Local 32B-32J in both cases allege that the unit consists of eight employees.

[5] *San Clemente Publishing Corporation; Coastline Publishers, Inc.*, 167 NLRB 6 (1967), affd. 408 F.2d 367 (9th Cir. 1969); *Brown & Connolly, Inc.*, 237 NLRB 271 (1978), affd. 593 F.2d 1373 (1st Cir. 1979); *U & I, Inc.*, 227 NLRB 1 (1976).

CONCLUSIONS OF LAW

No violations of the Act were committed.

Upon the foregoing findings of fact and conclusions of law, upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[6]

The complaint is dismissed in its entirety.

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[6] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.